

(b) The manufacturer must annually, within 30 days after the end of the model year, notify the Administrator of the number of engines produced by engine family, by gross power, by displacement, by fuel system, and, for engines produced under the provision of § 89.102(g), by engine model and purchaser (or shipping destination for engines used by the engine manufacturer), or by other categories as the Administrator may require.

[59 FR 31335, June 17, 1994. Redesignated and amended at 63 FR 56995, 57005, Oct. 23, 1998]

**§ 89.126 Denial, revocation of certificate of conformity.**

(a) If, after review of the manufacturer's application, request for certification, information obtained from any inspection, and any other information the Administrator may require, the Administrator determines that one or more test engines do not meet applicable standards (or family emission limits, as appropriate), then the Administrator will notify the manufacturer in writing, setting forth the basis for this determination.

(b) Notwithstanding the fact that engines described in the application may comply with all other requirements of this subpart, the Administrator may deny the issuance of, suspend, or revoke a previously issued certificate of conformity if the Administrator finds any one of the following infractions to be substantial:

(1) The manufacturer submits false or incomplete information;

(2) The manufacturer denies an EPA enforcement officer or EPA authorized representative the opportunity to conduct authorized inspections;

(3) The manufacturer fails to supply requested information or amend its application to include all engines being produced;

(4) The manufacturer renders inaccurate any test data which it submits or otherwise circumvents the intent of the Act or this part;

(5) The manufacturer denies an EPA enforcement officer or EPA authorized representative reasonable assistance (as defined in § 89.129(e)).

(c) If a manufacturer knowingly commits an infraction specified in paragraph (b)(1) or (b)(4) of this section,

knowingly commits any other fraudulent act which results in the issuance of a certificate of conformity, or fails to comply with the conditions specified in § 89.203(d), § 89.206(c), § 89.209(c) or § 89.210(g), the Administrator may deem such certificate void ab initio.

(d) When the Administrator denies, suspends, revokes, or voids ab initio a certificate of conformity the manufacturer will be provided a written determination. The manufacturer may request a hearing under § 89.127 on the Administrator's decision.

(e) Any suspension or revocation of a certificate of conformity shall extend no further than to forbid the introduction into commerce of engines previously covered by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct that makes the certification invalid ab initio.

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**§ 89.127 Request for hearing.**

(a) A manufacturer may request a hearing on the Administrator's denial, suspension, voiding ab initio or revocation of a certificate of conformity.

(b) The manufacturer's request must be filed within 30 days of the Administrator's decision, be in writing, and set forth the manufacturer's objections to the Administrator's decision and data to support the objections.

(c) If, after review of the request and supporting data, the Administrator finds that the request raises a substantial and factual issue, the Administrator will grant the manufacturer's request for a hearing.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56995, Oct. 23, 1998]

**§ 89.128 Hearing procedures.**

(a)(1) After granting a request for a hearing the Administrator shall designate a Presiding Officer for the hearing.

(2) The hearing will be held as soon as practicable at a time and place determined by the Administrator or by the Presiding Officer.

(3) The Administrator may, at his or her discretion, direct that all argument

and presentation of evidence be concluded within a specified period established by the Administrator. Said period may be no less than 30 days from the date that the first written offer of a hearing is made to the manufacturer. To expedite proceedings, the Administrator may direct that the decision of the Presiding Officer (who may, but need not, be the Administrator) shall be the final EPA decision.

(b)(1) Upon appointment pursuant to paragraph (a) of this section, the Presiding Officer will establish a hearing file. The file shall consist of the following:

- (i) The determination issued by the Administrator under § 89.126(d);
- (ii) The request for a hearing and the supporting data submitted therewith;
- (iii) All documents relating to the request for certification and all documents submitted therewith; and
- (iv) Correspondence and other data material to the hearing.

(2) The hearing file will be available for inspection by the applicant at the office of the Presiding Officer.

(c) An applicant may appear in person or may be represented by counsel or by any other duly authorized representative.

(d)(1) The Presiding Officer, upon the request of any party or at his or her discretion, may arrange for a prehearing conference at a time and place he/she specifies. Such prehearing conference will consider the following:

- (i) Simplification of the issues;
- (ii) Stipulations, admissions of fact, and the introduction of documents;
- (iii) Limitation of the number of expert witnesses;
- (iv) Possibility of agreement disposing of any or all of the issues in dispute; and
- (v) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(2) The results of the conference shall be reduced to writing by the Presiding Officer and made part of the record.

(e)(1) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by

the Presiding Officer of irrelevant, immaterial, and repetitious evidence.

(2) Witnesses will not be required to testify under oath. However, the Presiding Officer shall call to the attention of witnesses that their statements may be subject to the provisions of 18 U.S.C. 1001 which imposes penalties for knowingly making false statements or representations or using false documents in any matter within the jurisdiction of any department or agency of the United States.

(3) Any witness may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

(4) Hearings shall be reported verbatim. Copies of transcripts of proceedings may be purchased by the applicant from the reporter.

(5) All written statements, charts, tabulations, and similar data offered in evidence at the hearings shall, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(6) Oral argument may be permitted at the discretion of the Presiding Officer and shall be reported as part of the record unless otherwise ordered by the Presiding Officer.

(f)(1) The Presiding Officer shall make an initial decision which shall include written findings and conclusions and the reasons or basis regarding all the material issues of fact, law, or discretion presented on the record. The findings, conclusions, and written decision shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Administrator without further proceedings, unless there is an appeal to the Administrator or motion for review by the Administrator within 20 days of the date the initial decision was filed. If the Administrator has determined under paragraph (a) of this section that the decision of the Presiding Officer is final, there is no right of appeal to the Administrator.

(2) On appeal from or review of the initial decision, the Administrator shall have all the powers which he or she would have in making the initial

decision, including the discretion to require or allow briefs, oral argument, the taking of additional evidence, or the remanding to the Presiding Officer for additional proceedings. The decision by the Administrator may adopt the original decision or shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56995, Oct. 23, 1998]

**§ 89.129 Right of entry.**

(a) Any manufacturer who has applied for certification of a new engine or engine family subject to certification testing under this subpart shall admit or cause to be admitted to any of the following facilities during operating hours any EPA enforcement officer or EPA authorized representative on presentation of credentials.

(1) Any facility where any such certification testing or any procedures or activities connected with such certification testing are or were performed;

(2) Any facility where any new engine which is being, was, or is to be tested is present;

(3) Any facility where any construction process or assembly process used in the modification or buildup of such an engine into a certification engine is taking place or has taken place; and

(4) Any facility where any record or other document relating to any of the above is located.

(b) Upon admission to any facility referred to in paragraph (a)(1) of this section, any EPA enforcement officer or EPA authorized representative shall be allowed:

(1) To inspect and monitor any part or aspect of such procedures, activities, and testing facilities, including, but not limited to, monitoring engine pre-conditioning, emission tests and service accumulation, maintenance, and engine storage procedures, and to verify correlation or calibration of test equipment;

(2) To inspect and make copies of any such records, designs, or other documents; and

(3) To inspect and photograph any part or aspect of any such certification

engine and any components to be used in the construction thereof.

(c) To allow the Administrator to determine whether production engines conform in all material respects to the design specifications applicable to those engines, as described in the application for certification for which a certificate of conformity has been issued, any manufacturer shall admit any EPA enforcement officer or EPA authorized representative on presentation of credentials to:

(1) Any facility where any document, design, or procedure relating to the translation of the design and construction of engines and emission-related components described in the application for certification or used for certification testing into production engines is located or carried on; and

(2) Any facility where any engines to be introduced into commerce are manufactured or assembled.

(d) On admission to any such facility referred to in paragraph (c) of this section, any EPA enforcement officer or EPA authorized representative shall be allowed:

(1) To inspect and monitor any aspects of such manufacture or assembly and other procedures;

(2) To inspect and make copies of any such records, documents or designs; and

(3) To inspect and photograph any part or aspect of any such new engines and any component used in the assembly thereof that are reasonably related to the purpose of his or her entry.

(e) Any EPA enforcement officer or EPA authorized representative shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he or she may request to help the enforcement officer or authorized representative discharge any function listed in this paragraph. Each applicant for or recipient of certification is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not the applicant controls the facility.

(1) Reasonable assistance includes, but is not limited to, clerical, copying, interpretation and translation services;